



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

April 14, 1995

Group 1500

Paper No. 23

In re Patent No. : 4,863,979
Issued : September 5, 1989
Patentees : The Dow Chemical Company
: Robert S. Beyersdorf, et al.
For : LATEX COMPOSITIONS USEFUL
: AS BINDERS IN COMPOSITE
: BOARD HAVING DIMENSIONAL
: STABILITY AND STRENGTH

R. G. Waterman
P.O. Box 1967
Midland, MI 48641-1967

You are hereby notified under 37 CFR § 1.607(d) that an applicant is seeking to provoke an interference with your Patent No. 4,863,979.

The identity of the applicant will not be disclosed unless an interference is declared.

If a final decision is made not to declare an interference, a notice to that effect will be placed in the patent file and will be sent to the patentee.

If an interference is declared, notice thereof will be made under 37 CFR § 1.611.

By

Theodora Scott-Smith
Theodora Scott-Smith, Secretary
Patent Examining Group 1500

- (3) @ _____, Esq., lead counsel for
@ _____;
- (4) @ _____, Esq., backup lead
counsel for @ _____; and
- (5) Fred E. McKelvey, Senior Administrative Patent
Judge.

Discussion

@insert any relevant discussion not otherwise covered
herein.

Reminders

(1) All papers (e.g., motions, preliminary motions, preliminary statements, briefs, etc.) filed in this interference shall be on 8½ x 11 paper (with the possible exception of original exhibits); papers of a different size, including legal size papers, shall not be filed.

(2) When presenting a paper in this interference, counsel shall not submit with the paper (as an appendix, exhibit, or otherwise) a copy of a paper previously filed in the interference (37 CFR § 1.618(b)).

(3) All papers served on opposing counsel in this interference shall be served by Express Mail (a one-day delivery service of the U.S. Postal Service) (37 CFR § 1.646(d)); alternatively counsel may serve opposing counsel using any means which accomplishes a one-day delivery, e.g., by hand, fax, or a commercial one-day delivery service.

(4) The patent statute (35 U.S.C. § 135(c)) requires the filing in the U.S. Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." Attention is directed to Unisys Corp. v. Commissioner, 1993 U.S. Dist. LEXIS 9157, Civil Action No. 92-1438 (D.D.C. June 30, 1993).

Preliminary motions

In accordance with discussion during the @hearing/telephone conference call, the following "Time Periods" are established in this interference:

TIME PERIOD 1

The time for filing and serving preliminary motions (37 CFR § 1.636(a)) is set to expire on @_____.

TIME PERIOD 2

The time for filing and serving:

- (1) oppositions to preliminary motions (37 CFR § 1.638(a)) and
- (2) preliminary motions pursuant to 37 CFR § 1.633(i) and (j) responsive to a preliminary motion filed by an opponent (37 CFR § 1.636(b))

is set to expire on @_____.

TIME PERIOD 3

The time for filing and serving:

(1) replies to oppositions (37 CFR § 1.638(b))
and

(2) oppositions to preliminary motions pursuant
to 37 CFR § 1.633(i) and (j)

is set to expire on @ _____.

TIME PERIOD 4

The time for filing replies to oppositions to preliminary motions pursuant to 37 CFR § 1.633(i) and (j) is set to expire on @ _____.

The parties are authorized to stipulate different times (earlier or later) for TIME PERIOD 1 and TIME PERIOD 2, provided, a written stipulation signed by counsel for all parties, including a proposed order shall be filed with the Board as soon as practical after any agreement is reached. The parties may not stipulate an extension of TIME PERIOD 3 or TIME PERIOD 4.

Titles of preliminary motions, etc.

The parties are requested to use one line titles for preliminary motions, oppositions, and replies, i.e.,

SMITH PRELIMINARY MOTION 1;

JONES OPPOSITION 1; and

SMITH REPLY 1.

The parties should briefly state in the first paragraph of a preliminary motion the precise relief requested. Two examples are:

(1) SMITH moves to be accorded the benefit of the filing date of application 07/999,999, filed January 22, 1993 or

(2) SMITH moves for judgment against JONES on the ground that JONES' claims corresponding to the count are unpatentable under 35 U.S.C. § 103 over the combined disclosures of U.S. Patent No. 4,444,444 (Johnson) and French Patent 1,111,111 (Boleau).

The parties are requested to state in the second paragraph the Exhibits, by exhibit number, relied upon in support of a preliminary motion, opposition, or reply.

Page number limitation on preliminary motion papers

A preliminary motion is limited to twenty (20) pages, not including any certificate of service.

An opposition to a preliminary motion is limited to twenty (20) pages, not including any certificate of service.

A reply to an opposition is limited to ten (10) pages, not including any certificate of service, and shall not raise any issue or rely on any evidence which reasonably could have been made or presented with the preliminary motion.

All typing in preliminary motions, oppositions and replies (including footnotes, but excluding headings, signature blocks and certificates of service) shall be double spaced.

"Combined" oppositions and replies not to be filed

An opposition shall respond to only a single preliminary motion; "combined" oppositions responding to more than one preliminary motion shall not be filed.

A reply shall respond to only a single opposition; "combined" replies to more than one opposition shall not be filed.

Requirement for two copies
of preliminary motion materials

An original and one (1) copy of each preliminary motion, opposition, reply, and any evidence submitted pursuant to 37 CFR § 1.639 shall be filed in the Patent and Trademark Office, the copy, but not the original, being marked at the top as follows:

"COPY FOR SENIOR JUDGE"

Request for copy of preliminary motions
in electronic format

Each party is requested to file with the Judge designated to handle this interference a computer floppy disk (preferably a 3½" high density disk, but a 5¼" disk is acceptable) containing in separate documents on the disk an electronic version of each preliminary motion, opposition, reply, and affidavit/declaration relied upon. The disk should be for use in an IBM compatible computer in WordPerfect 5.1 for DOS, Microsoft Word 6.0 for Windows, or ASCII format (preferably WordPerfect 5.1 for DOS). Presentation of preliminary motions, etc., in electronic form will greatly enhance my ability to promptly decide preliminary motions.

The disk or disks can be filed along with replies and exhibits on @_____.

Time and manner of filing exhibits

Exhibits referred to in preliminary motions, oppositions, replies or affidavits should be identified by exhibit numbers (not letters) on a label placed in the lower right-hand corner of the first page of the exhibit. Compare 37 CFR § 1.653(i). If important material is covered by an exhibit label on the first page of the exhibit, a copy of the first page of the exhibit may be reproduced and presented as page 1-a of the exhibit. Exhibits should be labeled, e.g., as follows:

JONES EXHIBIT 1
Jones v. Smith
Interference No. @

All original exhibits, including affidavits, should be submitted in an accordion type or other folder containing all exhibits in numerical order (the copy of each exhibit should be submitted in like fashion in a second accordion type or other folder), the idea being that each preliminary motion, opposition, reply or affidavit shall refer to the exhibit by number and it being an objective to avoid the filing of multiple copies of the same exhibit merely because an exhibit is referred to in more than one preliminary motion, opposition, reply or affidavit.

An exhibit, including an affidavit, relied upon in connection with preliminary motions, oppositions, and replies shall be served (but not filed) with the preliminary motion,

opposition, reply or affidavit in which the exhibit is first mentioned.

All exhibits, including affidavits, relied upon in connection with preliminary motions, oppositions, and replies shall be filed together in the Patent and Trademark Office on or before @_____.

Affidavits and declarations of expert witnesses

Affidavits and declarations expressing an opinion of an expert used in connection with preliminary motions must disclose the underlying facts or data upon which the opinion is based. See Fed. R. Evi. 705 and 37 CFR §§ 1.639(b) and 1.671(b). Opinions expressed without disclosing the underlying facts or data may be given little, or no, weight.

Hearing on preliminary motions

On or before @_____, the parties shall file a paper indicating whether or not they desire oral argument on preliminary motions, it generally being my preference to have oral argument where there are contested preliminary motions.

A date for oral arguments on preliminary motions will likely be in the time period @_____ through @_____, to be set more precisely in a future order, it being my intention to decide preliminary motions within three (3) weeks of the date of any hearing.

Preliminary statements

The time for filing preliminary statements (37 CFR § 1.621(a), see also 37 CFR § 1.627(a)) is set to expire on @_____.

The notice required by 37 CFR § 1.621(b) shall be filed and served on or before @_____.

Comments on requests for extensions of time

The parties attention is directed to the "Comments on requests for extensions of time" set out in the Notice Declaring Interference (Paper No. 1).

FRED E. MCKELVEY,
Senior Administrative Patent Judge

INTERFERENCE DIGEST

Interference No. 103,626 Paper No. 25
Name, Robert S. Beyersdorf et al.
Serial No. 07/205,037 Patent No. 4,863,979
Title, LATEX COMPOSITIONS USEFUL AS BINDERS IN COMPOSITE ...
Filed, June 10, 1988
Interference with John Felegi, Jr. et al.

DECISION ON MOTIONS

Examiner-in-Chief, _____ Dated, _____

FINAL DECISION

Board of Patent Appeals and Interferences [REDACTED] Dated, 1/3/97

Court, _____ Dated, _____

REMARKS

REQ. FOR RECON. dismissed as moot

